

Medi-Cal Program Guide (MPG) Letter #777

March 14, 2013

Subject TREATMENT OF SAME-SEX SPOUSES AND REGISTERED DOMESTIC PARTNERS (RDP) SUBJECT TO TRANSFER OF PROPERTY PENALTIES OR A SHARE-OF-COST (SOC) FOR NURSING FACILITY LEVEL OF CARE

Effective Date January 1, 2012

Reference All County Welfare Directors Letter (ACWDL) 12-36

Purpose To inform staff of the provisions of Assembly Bill (AB) 641, which extends spousal impoverishment undue hardship provisions to same-sex spouses and RDP with a spouse or partner receiving nursing facility level of care.

Background Transfer(s) of non-exempt property for less than fair market value by an institutionalized individual will be considered in determining a period of ineligibility (POI) for nursing facility level of care.

This applies to transfers made anytime during the 30 month(s) immediately preceding the most recent date of application for Medi-Cal or the date of admission to the nursing facility.

As part of the Medicare Catastrophic Coverage Act, transfers of any property between institutionalized spouses and their opposite-sex community spouses are an exception and are not considered disqualifying transfers subject to period(s) of ineligibility.

Highlighted Changes Effective January 1, 2012, AB 641 extends the full array of spousal protection now available to married, opposite-sex couples, to same-sex spouses and RDP through the transfer of property undue hardship provisions.

Same-sex spouses and RDP will be allowed to retain the same amount of income and property that opposite-sex spouses are permitted to retain when one of the spouses is an institutionalized spouse and the other spouse is a community spouse.

DHCS will send a provider bulletin to long term care and skilled nursing facilities informing them of these new provisions.

Required Action

Workers will evaluate transfers of property for legally married same-sex spouses and RDP with a spouse or partner receiving nursing facility level of care for undue hardship at:

- Application
- Redetermination; or
- When a request is made for a re-evaluation of the POI and/or SOC for nursing facility levels of care that occurred on or after January 1, 2012.

Legally married same-sex spouses is defined as:

- Married in California on or after 5:00 PM on June 16, 2008 and before November 5, 2008; or
- Married outside of California as long as they are current residents of California and the marriage was valid by the laws of the jurisdiction in which the marriage was contracted.

Workers will apply the existing regulations as outlined in the following MPG sections when evaluating for spousal impoverishment:

MPG Section	Description
Article 9, Section 7	<u>Conversions and Transfers</u>
Article 9, Section 13	<u>Treatment of Property of Institutionalized Spouses and Their Community Spouses, and Long-Term Care (LTC) Insurance Property Exemption</u>
Article 10, Section 5, Item 4.A	<u>Treatment of Income-Institutionalized Persons with LTC Status Who Have a Community Spouse</u>

No previously denied Medi-Cal cases that may have been impacted by these new provisions were identified; therefore, no retroactive evaluations are required.

Automation Impact

No Impact

Forms Impact

No Impact

**ACCESS
Impact**

No Impact

**Imaging
Impact**

No Impact

**PA (CalFresh
or
CalWORKs)
Program
Impact**

No impact

**Quality
Control (QC)
Impact**

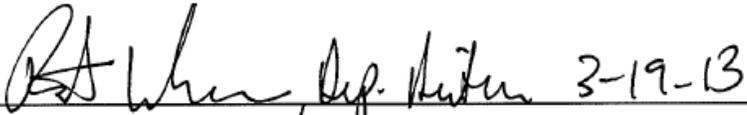
Effective the April 2013 review month, Quality Assurance will cite the appropriate error on any case that does not comply with the requirements outlined in this letter.

**Summary of
Changes**

The table below shows the changes made in the MPG cites.

Section	Summary of Change
Article 8, Section 6	Extension of spousal impoverishment provisions for RDPs.
Article 8, Section 7	Extension of spousal impoverishment provisions for same-sex spouses

**Approval for
Release**


R. A. Whelan, Dep. Director 3-19-13

EE

Article 8, Section 6 – Registered Domestic Partnerships

Table of Contents

TITLE	MPG CITE
Registered Domestic Partners	08.06.01
Situations Involving the CalWORKs Program	Appendix A

08.06.01 Registered Domestic Partners (RDP)

A. General

This section contains information for establishing the MFBU of registered domestic partnership cases in accordance with the California Domestic Partner Rights and Responsibilities Act of 2003 [Assembly Bill (AB) 205]. Effective January 1, 2005, AB 205 extends the rights and responsibilities of a spouse to RDP under state law.

ACWDL
09-03

Effective January 1, 2012, AB 641 extends spousal impoverishment undue hardship provisions to same-sex spouses and RDP with a spouse or partner receiving nursing facility level of care.

ACWDL
12-36

MPG Letter 777 (03/2013)

B. Definition of Registered Domestic Partnership

A registered domestic partnership exists when one of the following conditions is met:

Condition	Description
A	Two individuals of the same sex file a notarized Declaration of Domestic Partnership (DDP) with the Secretary of State.
B	Two individuals of the opposite sex file a notarized DDP with the Secretary of State and one or both of the individuals: <ul style="list-style-type: none"> • is/are over the age of sixty-two); AND • meets the Social Security Act eligibility requirement for Title II old-age insurance benefits or Title XVI for aged individual.
C	Legal union between two persons of the same sex, other than marriage, that was validly formed in another state.

C. Verification of Registered Domestic Partnership Just as a marriage certificate is not required of a married couple, RDPs are not required to document their status. RDPs only need to indicate on the application that they are domestic partners and sign under penalty of perjury.

D. Case Processing Access to Medi-Cal applications and eligibility determinations that are appropriate to a spouse shall also be provided to RDP. The addition of an RDP to the household of a beneficiary shall be treated the same as that of adding a new spouse to the household of a beneficiary. Adequate and timely notice must be provided for any adverse action.

E. Medi-Cal Eligibility Impact At present, federal law does not recognize registered domestic partnerships. With the exception of Spousal Impoverishment, it does not provide federal reimbursement for Medicaid (Medi-Cal in California) expenditure based on these partnerships.

Therefore, RDPs shall be treated as:

- Unmarried individuals for the purpose of determining eligibility to any federal Medi-Cal programs other than Spousal Impoverishment.
- Married couples for the purpose of determining eligibility to **state-only funded Medi-Cal** programs that are not based on federal law.
- Children with deprivation shall continue to link the parent(s) to Medi-Cal.

MPG Letter 777 (03/2013)

F. State-only funded Medi-Cal programs State-only funded Medi-Cal programs not based on federal law are limited to:

- Dialysis program (Aid Code 71)
- Total Parenteral Nutrition (TPN) program (Aid Code 73)
- Medically Indigent Adults in Long-Term-Care (LTC) program (Aid Code 53)
- Minor Consent program (Aid Code 7M, 7M, 7P, 7R)
- State funded Breast and Cervical Cancer Treatment Program (BCCTP)

G. MFBU Composition

- Each RDP shall establish his/her own federal Medi-Cal eligibility without considering the presence of the other RDP.
- If one or both of the RDP is/are also the natural or adoptive parents, then the child(ren) may serve as linkage to the parent(s) without regard to their RDP status.
- When there is no federal eligibility, treat the RDPs as spouses and evaluate if they are eligible for one of the state-only funded Medi-Cal

programs.

- Per [MPG Article 1 Section 1](#), a “parent” is defined as the natural or adoptive parent of child. Parentage may also be established when the name of both RDPs appear on the child’s birth certificate.

H. Eligibility Determination

The following procedures shall be used in determining Medi-Cal eligibility for applicant(s)/beneficiaries who are RDPs. For the table below, references to “parent” means natural/adoptive parent of child(ren). Parentage may also be established when the name of both RDPs appear on the child’s birth certificate.

Step	Action								
1	<p>Determine if the RDP qualifies for any federal Medi-Cal program based on his/her own information.</p> <table border="1" data-bbox="537 783 1398 1276"> <thead> <tr> <th data-bbox="537 783 748 821">If RDPs ...</th> <th data-bbox="748 783 1398 821">Then ...</th> </tr> </thead> <tbody> <tr> <td data-bbox="537 821 748 898">do not have child(ren),</td> <td data-bbox="748 821 1398 898">Treat RDPs as unmarried adult male or female.</td> </tr> <tr> <td data-bbox="537 898 748 1087">have mutual or adopted child(ren),</td> <td data-bbox="748 898 1398 1087"> <ul style="list-style-type: none"> • Treat RDPs as unmarried parents. • Both parents shall be responsible for mutual child(ren). • Children with deprivation may continue to serve as linkage for the parents. </td> </tr> <tr> <td data-bbox="537 1087 748 1276">Have separate child(ren),</td> <td data-bbox="748 1087 1398 1276"> <ul style="list-style-type: none"> • Treat RDPs as unmarried parent(s). • Each RDP shall be responsible for his/her natural/adopted child(ren). • Children with deprivation may continue to serve as linkage for the parents. </td> </tr> </tbody> </table>	If RDPs ...	Then ...	do not have child(ren),	Treat RDPs as unmarried adult male or female.	have mutual or adopted child(ren),	<ul style="list-style-type: none"> • Treat RDPs as unmarried parents. • Both parents shall be responsible for mutual child(ren). • Children with deprivation may continue to serve as linkage for the parents. 	Have separate child(ren),	<ul style="list-style-type: none"> • Treat RDPs as unmarried parent(s). • Each RDP shall be responsible for his/her natural/adopted child(ren). • Children with deprivation may continue to serve as linkage for the parents.
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2	If there is no eligibility to federal Medi-Cal programs, check for eligibility within the state-only programs and treat RDP as spouses.								
3	Send appropriate Medi-Cal notices upon determination of Medi-Cal eligibility or ineligibility.								

I. Long-Term Care

A RDP in LTC with no federal linkage (i.e., aged, blind or disabled) will have his/her eligibility determined under state-only Medically Indigent Adults in Long-Term-Care (LTC) program (Aid Code 53), with or without a SOC. If his/her RDP is not in LTC, spousal impoverishment provisions shall apply. The RDP who is not in LTC shall be considered the community spouse.

Effective January 1, 2012, when the institutionalized RDP turns 65 or is determined to be disabled, spousal impoverishment rules will

continue to apply.

In situations where both applicants are institutionalized RDPs, then the spousal impoverishment provisions shall NOT apply and the division of community property rules will apply.

MPG Letter 777 (03/2013)

**J.
Board and
Care**

Individuals who reside in a board and care facility are not eligible under the state-only LTC program. Workers will determine eligibility for two RDPs in board and care as individuals, or determine whether eligibility exists for one of the other state-only programs.

**K.
Situations
Involving
CalWORKs**

When one of the RDP is not the parent of the children

- Non-parent RDPs shall be evaluated for eligibility to federal and state-only Medi-Cal programs based on his/her own information.
- The income or property of the CalWORKs eligible parent RDP shall not be counted in the non-parent RDP Medi-Cal evaluation.
- Aid code 3S shall be used for the CalWORKs AU members who only qualify for CalWORKs but do not qualify for CalWORKs-linked Medi-Cal.
- When the non-parent RDP must be included in the AU for the parent RDP and children to be income eligible for CalWORKs, then the parent RDP and children must be granted CalWORKs under 3S aid code and Medi-Cal under 3N aid code.

When both RDPs are the parents of the children

- If all are income ineligible for CalWORKs, a separate Medi-Cal evaluation must be completed with the RDP parents as an unmarried couple with mutual/adopted children.
 - Refer to [Appendix A of Article 8, Section 6](#) for examples.
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APPENDIX A. SITUATIONS INVOLVING CALWORKS PROGRAM

General The following are CalWORKs scenarios. References to “parent” means natural/adoptive parent. Parentage may also be established when the name of both RDPs appear on the child’s birth certificate. The other “non-parent RDP” is not a natural/adoptive parent.

For CalWORKs, when the RDP is not the adoptive or biological parent of the child(ren) that person is considered to be a stepparent and therefore has the option of being an essential person.

Example 1 ***Scenario: Non-Parent RDP Excluded from CalWORKs AU***
The parent, two children, and non-parent RDP. The non-parent RDP elects not to be a member of the AU but wants medical assistance. The parent and children are eligible for CalWORKs-based Medi-Cal as an AU of three without the non-parent RDP included in the CalWORKs AU.

CalWORKs Determination

The worker will:

- apply the appropriate CalWORKs federal code that provides automatic CalWORKs linked Medi-Cal eligibility the parent and children; and
- refer the non-parent RDP to Medi-Cal for a separate Medi-Cal determination.

Medi-Cal Only Determination

The worker will:

- not count the income/assets of the parent toward the non-parent RDP’s Medi-Cal eligibility since the parent is on CalWORKs;
 - use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP;
 - utilize SB 87 in determining Medi-Cal eligibility;
 - determine if the non-parent RDP qualifies for any federal Medi-Cal program based on his or her own information;
 - check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program; and
 - upon determination of Medi-Cal eligibility or ineligibility, send the appropriate Medi-Cal Notice of Action (NOA).
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Example 2 ***Scenario: Non-parent RDP included in CalWORKs AU***
The parent and children are eligible for CalWORKs as an AU of three

without the non-parent RDP being included in the CalWORKs AU. The non-parent RDP wants to be in the AU. Therefore, the parent, two children, and non-parent RDP are a four person CalWORKs AU. While the parent and the two children remain eligible for CalWORKs with the RDP in the AU, the RDP is a non-parent. Therefore, the nonparent RDP does not qualify for CalWORKs-linked Medi-Cal.

CalWORKs Determination

The worker will:

- apply the appropriate CalWORKs federal code that provides automatic CalWORKs-linked Medi-Cal eligibility to the parent and children; and
- refer the non-parent RDP to Medi-Cal for a separate Medi-Cal determination

Medi-Cal Determination

The worker will:

- not count the income/assets of the parent toward the non-parent RDP's Medi-Cal eligibility since the parent is on CalWORKs;
- use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP;
- utilize SB 87 in determining Medi-Cal eligibility;
- determine if the non-parent RDP qualifies for any federal Medi-Cal program based on his or her own information;
- check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program; and
- upon determination of Medi-Cal eligibility or ineligibility, send the Medi-Cal Notice of Action (NOA).

Example 3

Scenario: Both parents RDPs included and CalWORKs Eligible

The parent, two children, and the RDP apply for CalWORKs. The RDP in this scenario is also the adoptive parent of the two children. The parent, two children and RDP/adoptive parent are a four person CalWORKs AU. They all qualify for CalWORKs and CalWORKs linked Medi-Cal.

CalWORKs Determination

The worker will:

- apply the CalWORKs federal code to the parents and children that provides automatic Medi-Cal eligibility; and
- no referral to Medi-Cal is necessary.

Example 4

Scenario: Non-parent RDP included in CalWORKs AU

The parent and two children are ineligible for CalWORKs because of

excess income. The household includes a **non-parent RDP**. The RDP wants to be included in the AU. Including the RDP makes the AU income eligible for CalWORKs.

CalWORKs Determination

The worker will:

- compute two budgets as follows:
 - include parent and children only – not income eligible to CalWORKs
 - include parent, children, and non-parent RDP – income eligible to CalWORKs
- Place the CalWORKs eligible parent and children on:
 - 3S aid code for CalWORKs which would give them CalWORKs without CalWORKs-linked Medi-Cal
 - 3N aid code for Medi-Cal
- Refer the non-parent RDP to Medi-Cal for a Medi-Cal determination.

Medi-Cal Determination

The worker will:

- not count the income/assets of the parent toward the non-parent RDP's Medi-Cal eligibility since the parent is on CalWORKs;
- use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP;
- use SB 87 in determining Medi-Cal eligibility;
- determine if the non-parent RDP qualifies for a program based on his or her own information;
- check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program; and
- upon determination of Medi-Cal eligibility or ineligibility, send the Medi-Cal Notice of Action (NOA).

Reason/Basis/Rationale for Placing the Parent and Children in the 1931(b) Program Aid Cod of 3N

- The CalWORKs income standard is based on the minimum Basic standard of Adequate Care (MBSAC) that varies according to family size.
- The income test for Section 1931(b)-only applicants is based on the federal poverty level for the size of the Medi-Cal family budget unit (MFBU).
- Medi-Cal uses the poverty level test, or may use a test based on the highest MBSAC used in CalWORKs with income deductions similar to, but slightly higher than, those of CalWORKs if earned income exists.
- The amounts established for the MBSAC levels used in CalWORKs are less than the 100 percent of federal poverty level (income test for Section 1931(b)) for the same size family.

- Furthermore, the MBSAC amount used by CalWORKs for any family size is always less than the federal poverty level amount for an MFBU family that is one individual smaller. For example, the MBSAC level amount for a federal family of three is less than the MFBU federal poverty level for a family size of two.
 - Therefore, a CalWORKs income limit for a family size of X+1 will always be less than the 1931(b) income limit for a family size of X.
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Example 5

Scenario: Both parents RDP and not CalWORKs eligible

The parent, two children, and the RDP/adoptive parent are not eligible for CalWORKs based on excess income. The **RDP is a parent** and must be in the AU. The parent, two children, and RDP/adoptive parent make a four person CalWORKs AU and all are income ineligible for CalWORKs.

CalWORKs Determination

The worker will refer all four for a Medi-Cal eligibility determination.

Remember, although the second parent is an adoptive parent, for federal reporting purposes Medi-Cal does not recognize registered domestic partnerships. Therefore, there is a need for the following Medi-Cal determination.

Medi-Cal Eligibility Determination

The worker will:

- use the information in the CalWORKs case to determine Medi-Cal eligibility
 - use SB 87 in determining Medi-Cal eligibility;
 - determine eligibility for both parents as an unmarried couple with mutual children; and
 - upon determination of Medi-Cal eligibility or ineligibility, send the appropriate Medi-Cal NOA.
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Article 8, Section 7 – Same-Sex Marriage

Table of Contents

TITLE	MPG CITE
Same Sex Spouses	08.07.01

08.07.01 Same-Sex Spouses

A. General

On May 15, 2008, the California Supreme Court ruled that the Constitutional right to marry under the California Constitution applies to same sex couples as well as to opposite sex couples. The decision became final and effective at 5:00 PM on June 16, 2008.

ACWDL
09-04

In November 2008, voters approved Proposition 8, which amended the State Constitution by eliminating the right of same sex individuals to marry in California. Proposition 8 became effective November 5, 2008.

Similar to registered domestic partnerships, marriages between individuals of same sex are not recognized by the federal government. Therefore, with the exception of spousal impoverishment, no federal reimbursement for Medi-Cal costs may be claimed. Effective January 1, 2012, AB 641 extends spousal impoverishment undue hardship provisions to same-sex spouses with a spouse receiving nursing facility level of care.

ACWDL
12-36

The rights and responsibilities provided under California Domestic Partners Rights and Responsibilities Act of 2003 for state-only funded programs shall also extend to spouses of same-sex marriages.

MPG Letter 777 (03/2013)

B. Case Processing

The procedures used in determining eligibility to Medi-Cal for RDP ([MPG 08.06.01](#)) shall also apply to spouses of same sex who were married legally and whose marriage has not been dissolved or annulled. Legally married same-sex spouses is defined as:

- Married in California on or after 5:00 PM on June 16, 2008 and before November 5, 2008; or
- Married outside of California as long as they are current residents of California and the marriage was valid by the laws of the jurisdiction in which the marriage was contracted.

